

**Notice of Allowability**

Application No.

09/810,523

Examiner

Thong Q. Nguyen

Applicant(s)

MINOBE ET AL.

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2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment of 7/6/07.
2. ☒ The allowed claim(s) is/are 3-5, 7-12, 14-33 and 36-37 which are renumbered as claims 1-31.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

THONG NGUYEN  
PRIMARY EXAMINER

## **DETAILED ACTION**

### ***Response to Amendment***

1. The present Office action is made in response to the amendment filed on July 6, 2007. It is noted that in the amendment, applicant has canceled claims 40-50. The pending claims are claims 3-5, 7-12, 14-33 and 36-37, and these claims are examined in this Office action. Note that claims 1 and 6 were canceled in the amendment of 8/22/06; claims 2 and 13 were canceled in the amendment of 9/7/06 and claims 34-35 and 38-39 were canceled in the amendment of 3/24/05.

### ***Allowable Subject Matter***

2. Claims 3-5, 7-12, 14-33 and 36-37 are allowed.
3. The following is an examiner's statement of reasons for allowance:
  - a) The device as claimed in each of independent claims 3, 14, 18, 26, 32, 33, 36 and 37 is patentable with respect to the prior art, in particular, the U.S. Patent Nos. 5,305,139 and 5,684,626 by the limitations related to the phase plate or the spatial filter or the polarization element disposed at a position of a diffraction image plane, and the objective lens is adapted to be focused on either one of the diffraction image plane and the sample. It is noted that while the use of an illuminating system having optics for focusing illuminating light onto a converging point, a sample disposed between the illuminating system and the converging point, and an objective lens disposed after the converging point is disclosed in the mentioned Patents; however, the cited Patents do not disclose the feature related to the phase plate or the spatial filter disposed at a position of a diffraction

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image plane which is orthogonal to the optical axis of the illuminating light and includes a converging point for selectively blocking a part of the illuminating light transmitted through a sample or to change the polarization features of the light beam on the sample, and the objective lens is adapted to be focused on either one of the diffraction image plane and the sample.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

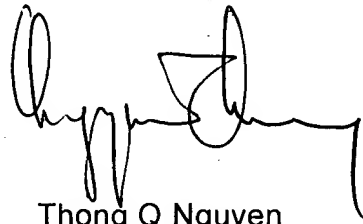
#### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q. Nguyen whose telephone number is (571) 272-2316. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephone B. Allen can be reached on (571) 272-2434. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Thong Q. Nguyen', with a stylized flourish at the end.

Thong Q. Nguyen  
Primary Examiner  
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